

**Montana Code Annotated 2005**EXHIBIT 1  
DATE 02/16/07  
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**75-10-107. State regulations no more stringent than federal regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

- (a) the proposed state standard or requirement protects public health or the environment of the state; and
- (b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

**History:** En. Sec. 3, Ch. 471, L. 1995.

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**75-10-204. Powers and duties of department.** The department shall, subject to the provisions of [75-10-107](#), adopt rules governing solid waste management systems that must include but are not limited to:

- (1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;
- (2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;
- (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;
- (4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;
- (5) requirements relating to ground water monitoring, including but not limited to:
  - (a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in [75-10-207](#) are required to submit to the department to enable the department to prepare the priority compliance list authorized by [75-10-207\(3\)](#);
  - (b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and
  - (c) recordkeeping and reporting;
- (6) the imposition of a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;
- (7) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, and disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;
- (8) any other factors relating to the sanitary disposal or management of solid wastes.

**History:** En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1); amd. Sec. 3, Ch. 358, L. 1981; amd. Sec. 3, Ch. 677, L. 1989; amd. Sec. 5, Ch. 643, L. 1991; amd. Sec. 3, Ch. 273, L. 1993; amd. Sec. 14, Ch. 471, L. 1995; amd. Sec. 2, Ch. 373, L. 1997; amd. Sec. 8, Ch. 170, L. 2001.

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- (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;
- (4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;
- (5) requirements relating to ground water monitoring, including but not limited to:
  - (a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 are required to submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);
  - (b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and
  - (c) recordkeeping and reporting;
- (6) the imposition of a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;
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